



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/169874

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on February 17, 2016, at New Richmond, Wisconsin. Hearings scheduled for December 17, 2015, and January 14, 2016, were rescheduled at the petitioner's request.

The issue for determination is whether the IRIS program must provide the petitioner with a Butler Lift.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner receives Medical Assistance-Waiver benefits through the IRIS program

3. The petitioner receives approximately 17 hours of supportive home care and personal care worker hours per day. He is home alone at least four hours every evening and two hours every morning. He receives overnight care.
4. The petitioner requests that the IRIS program pay for a Butler lift at a cost of \$21,435.17. The program had denied his request on September 11, 2015. The Division of Health Services upheld the denial on September 30, 2015
5. The lift would allow him to get to the lower level of his house when he did not have a caregiver available.

DISCUSSION

The petitioner receives Medical Assistance-Waiver benefits through IRIS, an alternative to the Family Care and Partnership programs that allows persons to direct their own care. *IRIS Policy Manual*, § 1.1. IRIS, which stands for “Include, Respect I Self-Direct,” was developed pursuant to a medical assistance waiver Wisconsin obtained under section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. He seeks a one-time payment for a Butler lift at a cost of \$21,435.17 that will allow him to go from the main to the lower level of his house when his caregiver is not there. The IRIS program denied the request and that denial was upheld by the Department.

Lifts such as this are considered durable medical equipment. They must be authorized by the Division of Health Care Financing before they can be paid for by the medical assistance program. *See* Wis. Admin. Code, § DHS 107.24. When determining whether a service is necessary, the division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner contends he needs the lift for safety because if there is storm when no one is around he could not get to the lower level, which he contends is safer because he could go where there are no

windows. IRIS pays for 17 hours of supportive home care and personal care worker hours each day. He is home alone four hours in the evening and two hours in the morning; he has help overnight. (I am aware that these hours do not add up to 24, but this is how the evidence was presented.) The Department contends that if the petitioner's house lost power, the lift would not operate. He states that they come with a backup battery. He also says that he would give up some of the care he receives to have it installed.

I understand why the petitioner wants the lift, but the evidence was too vague to approve it. He has the burden of proving that this is medically necessary by the preponderance of the credible evidence. To obtain approval he needs expert testimony concerning whether it would work in the case of an fire or power outage. I also need a more concrete proposal on what reductions in care he is willing to receive and how he intends to go about reducing it. Finally, I need evidence that there is not cheaper option that will accomplish something similar. Based upon this, I find that the petitioner has not met his burden of proof and uphold the department's denial.

CONCLUSIONS OF LAW

IRIS and the Department correctly denied the petitioner's request for a Butler lift because he has not shown by the preponderance of the evidence that it is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

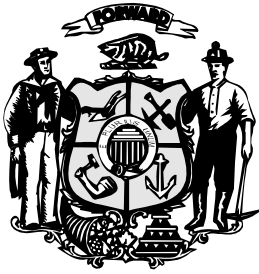
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 17, 2016.

Bureau of Long-Term Support